

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

RECEIVED

AUG 21 2003

In the Matter of

Federal Communications Commission
Office of Secretary**KEY COMMUNICATIONS, LLC**

And

KEYSTONE WIRELESS, LLCFor Waiver of Deadlines for
Implementation of Phase II E911)
)
)
)
)
)

CC Docket No. 94-102

To: The Commission

**PETITION FOR WAIVER OF DEADLINES FOR
 IMPLEMENTATION OF PHASE II E911**

Key Communications, LLC ("Key") and Keystone Wireless, LLC ("Keystone") (collectively, "Petitioner-Small Carriers"), by their attorney and pursuant to Section 1.3 of the Commission's Rules, hereby submit this Petition for Waiver of Deadlines for Implementation of Phase II E911 ("Petition"). In this Petition, the Petitioner-Small Carriers request a five-year extension of their deadline for implementation of Phase II E911, until October 1, 2008.¹

As discussed herein, it is not that Petitioner-Small Carriers are unwilling to implement Phase II E911 – rather, it is that it is physically impossible for them to do so. There is no handset-based solution available, and there is not going to be any such solution in the foreseeable future. The only network-based solutions available work using triangulation techniques, and triangulation only works in densely-populated areas simultaneously covered by at least three different cell sites. The vast bulk of the coverage area of each of the Petitioner-Small Carriers is within the boundary of only one or two cell sites, eliminating the option of a network-based solution.

¹ Key received its first Phase II E911 request on or about April 1, 2003.

No. of Copies rec'd
 List ABCDE

014

DESCRIPTION OF PETITIONER-SMALL CARRIERS

Key Communications, LLC.

Key is a small, privately-held carrier operating broadband PCS systems using GSM technology in the Charleston and Huntington, West Virginia BTA's under call signs KNL795,² WPOJ800, WPOJ801, WPOJ802, and WPOJ803. Key operates a total of 65 cell sites under these call signs, which cover a mountainous area. Due to substantial terrain blockage, even in the more urban portions of Key's service area, there is insufficient multiple cell overlap to support triangulation.

Keystone Wireless, LLC.

Keystone is also a small, privately-held carrier, operating broadband PCS systems using GSM technology in various small eastern and mid-Pennsylvania BTAs, under call signs KNL701, KNL703, KNL945, WPOJ725, WPOJ726, WPOJ727, WPOJ728, and WPOJ729. As with Key, Keystone serves a number of hilly areas with substantial terrain blockage. Keystone operates a cumulative total of 158 cell sites. There is insufficient multiple cell overlap to support triangulation.

RELIEF BEING REQUESTED

The Petitioner-Small Carriers respectfully request a five-year extension, until October 1, 2008, of the deadline for implementation of Phase II E911, with an understanding that such waiver would then be extended if technology has not advanced sufficiently to make Phase II accuracy feasible. During this period, Petitioner-Small Carriers would continue to monitor technical developments, including any developments in the area of handsets as well as any

² This call sign is not currently held or operated by Key, but assignment of this call sign to Key is pending under File No. 0001405271. Consummation of that assignment will provide additional spectrum to Key in the Charleston BTA, but will not extend or alter its service footprint.

developments that could allow a network-based solution other than through triangulation. If any such technical development occurred to make Phase II location accuracy feasible, Petitioner-Small Carriers would implement it.

JUSTIFICATION FOR THE REQUESTED WAIVER

Simply stated, Petitioner-Small Carriers seek a waiver of the requirement to achieve Phase II location accuracy for E911 because it is physically impossible for them to meet that requirement, either now or in the foreseeable future. The problem is the limitation in the advancement of science, not any limitation in the desire or will of Petitioner-Small Carriers to provide the latest available safety features.

Originally, Petitioner-Small Carriers intended to meet the Phase II accuracy requirements by means of a handset-based solution. Indeed, at the time the Commission adopted its E911 rules, equipment vendors appeared to be confident that they would be able to develop and manufacture compliant handset equipment well in advance of the staged E911 deadlines set forth in the new Commission rules. However, with the benefit of hindsight, such was not the case.

Attached hereto as Exhibit 1 is a copy of the latest e-mail received by Petitioner-Small Carriers from their account manager at Nokia, dated July 29, 2003. Nokia is the largest manufacturer of wireless handsets in the world, and a leader in the introduction of wireless handsets with additional functions and capabilities. As stated in that e-mail:

Nokia has no handset in it's [*sic*] current GSM portfolio that supports GPS for E911. I would be very surprised if any manufacturer had such a handset. Furthermore, to my knowledge, Nokia has no plans to produce such a handset for GSM and I would be very surprised if any other manufacturer had such a handset on the drawing board for GSM.

Based upon this information, it is no longer possible to plan upon a handset-based solution for Phase II E911. Nor is it possible to change to a network-based solution. All current network-

based solutions for Phase II E911 rely upon triangulation to identify the caller's location. Triangulation can work only where the caller is within the footprint of at least three different cell sites simultaneously. Smaller systems such as those operated by the Petitioner-Small Carriers have neither the volume nor any other characteristics to justify such multiple cell overlap. Additional, overlapping cells built just to accommodate triangulation needs would sit empty of traffic 99% of the time.

Accordingly, the issue is not whether or not Petitioner-Small Carriers implement Phase II E911 (they cannot), but whether their continued operation at a Phase I E911 level of location accuracy is deemed lawful or unlawful. Where, as here, compliance with the rules is impossible, and enforcement of the rule would force the entire cessation of operations (and concomitant elimination of the current Phase I E911 service), enforcement of the rule would undermine the very reason for the rule (enhancing public safety), while waiver would promote the reasons for the rule.

CONCLUSION

Petitioner-Small Carriers request a waiver of the requirement that they achieve Phase II E911 location accuracy, until October 1, 2008. Hopefully, by that time, technical advances will have succeeded in the development of a solution for the less densely populated areas served by carriers such as the Petitioner-Small Carriers. In the meantime, however, it makes no sense to

try to enforce a standard of accuracy where no one has ever developed a technology for achieving that level of accuracy in less densely populated areas.

Respectfully submitted,
**KEY COMMUNICATIONS, LLC and
KEYSTONE WIRELESS, LLC**

August 21, 2003

By: 
David J. Kaufman, Their Attorney

Brown Nietert & Kaufman, Chartered
2000 L Street NW, Suite 817
Washington, DC 20036
(202)-887-0600

Subject: E911

From: <tommy.carter@nokia.com>

Date: Tue, 29 Jul 2003 11:58:55 -0400

To: <bwilson@pcmgt.com>

Bob,

Per our conversation this morning, I wanted to make sure you understood that Nokia has no handset in it's current GSM portfolio that supports GPS for E911. I would be very surprised if any manufacturer had such a handset. Furthermore, to my knowledge, Nokia has no plans to produce such a handset for GSM and I would be very surprised if any other manufacturer had such a handset on the drawing board for GSM.

I hope this information helps you in your research.

Sincerely,

Tommy Carter

Account Manager

Nokia Mobile Phones

615-973-6060

tommy.carter@nokia.com

DECLARATION OF JAMES WILLIAMS

James Williams hereby states, under penalty of perjury, as follows:

1. My name is James Williams. I am the E911/CALEA Liaison Officer for each of Key Communications, LLC and Keystone Wireless, LLC (collectively, the "Petitioner-Small-Carriers"). The Petitioner-Small-Carriers are small carriers who employ me on a collective basis to be responsible for compliance with E911 and CALEA requirements.

2. I have reviewed the Petitioner-Small-Carriers' **"PETITION FOR WAIVER OF DEADLINES FOR IMPLEMENTATION OF PHASE II E911"** ("Petition"). All facts set forth in the Petition are true and correct, to the best of my knowledge, information and belief.

Executed August 21st, 2003.


James Williams